

FINAL STATEMENT OF REASONS

This action amends and adopts provisions governing the management of inmate sexual misconduct (indecent exposure and sexual disorderly conduct offenses) within the California Department of Corrections and Rehabilitation (CDCR). California Code of Regulations (CCR), Sections 3000, 3315, 3323, and 3341.5 are being amended to make permanent and facilitate statewide implementation of a successful 24-month pilot program developed at Pelican Bay State Prison pursuant to an injunction issued in *Freitag vs. California Department of Corrections and Rehabilitation*, Case No. CV-00-02278-TEH, U.S. Court of Appeals for the Ninth Circuit. The pilot program was designed to decrease the opportunity for inmates to engage in sexual misconduct and minimize the impact inmate sexual misconduct has on prison staff.

Because inmate sexual misconduct occurs at prisons throughout the State, statewide implementation of the pilot program is appropriate. The regulations will require that inmates found guilty of sexual misconduct will be subject to credit and privilege losses including canteen, appliances, and annual and/or quarterly package restrictions in excess of those currently provided for in the CCR, Title 15, Crime Prevention and Corrections. Additionally, inmates found guilty of committing Indecent Exposure or Sexual Disorderly Conduct offenses may also be subject to the assessment of an “R” suffix at the discretion of the classification committee and retention in the Security Housing Unit (SHU).

Inmates who engage in acts of sexual misconduct will be subjected to Security Measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff. Security Measures are tools used by staff for a determinate period to identify, prevent, and curtail the threatening behavior.

There are two kinds of Security Measures, Precautions and Restrictions. Security Precautions are not used as a punishment and should not be confused with disciplinary restrictions. Security Restrictions are applied as a result of a disciplinary action where inmates are afforded due process.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

Section 3000 is amended to incorporate the word definition for Indecent Exposure and Sexually Disorderly Conduct. PC Section 314 is the basis for the Indecent Exposure definition. It is necessary for this language to be placed in the CCR for clarity and ease of understanding for correctional staff for expedited reference and an explanation specific to inmate behavior regarding indecent exposure. The definition for Sexual Disorderly Conduct was extracted from various sections within the PC and the *Freitag* injunctive relief ordered by Federal Judge Henderson. These definitions are necessary to ensure that the behavior regarding indecent exposure and sexual disorderly conduct are clear as not to be confused with other behavior issues. The Note Section of the CCR has been amended to include PC 314 regarding the definition of Indecent Exposure and Sexual Disorderly Conduct.

Subsection 3315(a) through (f)(5)(K) are unchanged.

Subsection 3315(f)(5)(L), (L)1 and (L)2 is adopted to include indecent exposure or sexually disorderly conduct to the list of misconduct that shall be reportable as a serious rule violation. The specific acts of Indecent Exposure or Sexual Disorderly Conduct are in violation of section 3007, Sexual Behavior rule violation. Sections 3323(d)(7), (f)(5) and (g)(8) are used to provide staff the parameters of disposition that can be assessed for that offense as a result of a finding of guilt. This section describes the specific loss of privileges for first, second and subsequent offense violation that include the loss of any or all of the following: loss of canteen, loss of appliances, annual and/or vendor packages, telephone privileges and loss of personal property. The first, second and subsequent offense violation(s) shall result in the same privilege loss as above for 90 days and up to 180 days, respectively. This loss of privilege is necessary to provide incentive for proper inmate behavior.

Subsection 3315(g) is unchanged.

The Note Section is amended to add Penal Code Sections 314 and as references regarding Indecent Exposure and Sexual Disorderly Conduct.

Subsections 3323(a) through 3323(d)(6) are unchanged.

New subsection 3323(d)(7) is adopted to include Indecent Exposure with a prior court conviction under PC 314 or PC 288 is to be classified as a Division “B” offense. Including this offense, as defined in Section 3000, in this subsection will aid staff in correctly classifying Indecent Exposure with a prior court conviction as a Division “B” offense. Inmates who engage in acts of Indecent Exposure will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Existing subsection 3323(d)(7) through 3323(d)(8) is renumbered to 3323(d)(8) through 3323(d)(9) respectively, and is unchanged.

Subsections 3323(e) through 3323(f)(4) is unchanged.

Subsection 3323(f)(5) is amended to specify that Indecent Exposure without a prior court conviction under PC 314 or PC 288 is included as a Division “D” offense. Including this offense, as defined in Section 3000, in this subsection will aid staff in correctly classifying Indecent Exposure without a prior court conviction as a Division “D” offense. Inmates who

engage in acts of Indecent Exposure will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Subsections 3323(f)(6) through 3323(g)(7) are unchanged.

New Subsection 3323(g)(8) is adopted to specify that sexual disorderly conduct, as defined in Section 3000, is included as a Division “E” offense. Including this offense in this subsection will aid staff in correctly classifying Sexual Disorderly Conduct as a Division “E” offense. Inmates who engage in acts of Sexual Disorderly Conduct will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Existing subsection 3323(g)(8) through 3323(g)(9) is renumbered to 3323(g)(9) through 3323(g)(10) respectively, and is unchanged.

Subsections 3323(h) through 3323(k) are unchanged.

The Note Section is amended to add Penal Code Section 314 as a reference regarding Indecent Exposure and Sexually Disorderly Conduct.

Subsections 3341.5(a) through 3341.5(c)(9)(J) are unchanged.

New subsection 3341.5(c)(9)(K) is adopted to include the category of Sexual Misconduct, in the Segregated Housing Unit (SHU) Term Assessment Chart. Sexual Misconduct includes Indecent Exposure and Sexual Disorderly Conduct (with two or more offenses within a twelve month period). The typical SHU term will be fixed as follows: Low – 3 months, Expected – 6 months and High – 9 months terms. The SHU term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement. The initial text of Emergency regulation had a typographical error, this text changes the SHU term from “3” to “03” to be consistent with the “06” and “09” month terms for Indecent Exposure and Sexual Disorderly Conduct.

Existing subsection 3341.5(c)(9)(K) through 3341.5(c)(9)(L) is renumbered to 3341.5(c)(9)(L) through 3341.5(c)(9)(M) respectively, and is unchanged.

Subsection 3341.5(c)(10) through 3341.5(c)(10)(B) is unchanged.

The Note Section is amended to add Penal Code Section 314 as a reference regarding Indecent Exposure and Sexual Disorderly Conduct.

SUMMARIES AND RESPONSES TO PUBLIC COMMENTS:

COMMENTS #1:

Comment A: Commenter objects to the regulation. He states that the regulations will prohibit inmates from masturbating in the privacy of their cells. He states that this will lead to a large number of disciplinary violations. He states that inmates are not allowed to have

normal sex, and that family visits have been eliminated for the neediest inmates. Commenter states that masturbation is a useful tool to relieve stress and that it reduces male inmates' risk of developing prostate cancer by up to 50 percent according to the Journal of American Medical Association.

Accommodation: None.

Response A: Department contends that indecent exposure is prohibited by Penal Code 314. The regulations are narrowly tailored to address specific inmate sexual misconduct and are a direct result of the successful PBSP Pilot Program developed to reduce the opportunity for inmates to engage in sexual misconduct and minimize the impact inmate sexual misconduct has on prison staff. Additionally, to address the commenter's statement that masturbation is a useful tool to relieve stress and that it reduces male inmates' risk of developing prostate cancer by up to 50 percent according to the Journal of American Medical Association – A study was conducted and reported on in the August 2003 *BJU Int.* 92. "Sexual factors and prostate cancer". *BJU Int.* and in the April 7, 2004 article titled "Ejaculation Frequency and Subsequent Risk of Prostate Cancer" (*JAMA* 291) that showed men who ejaculated five times a week in their 20s had a decreased rate of prostate cancer, though others have shown no benefit. There are also some links between prostate cancer and medications, medical procedures, and medical conditions, and including the more likely cause of age, family history and obesity.

Comment B: Commenter contends that this regulation cannot be justified on the basis that a female staff member may take exception if she sees a male inmate masturbating in their cell. Commenter contends that female staff should not be allowed to conduct "counts" at male institutions just as male staff is prohibited from doing so at female institutions. He contends that masturbation should be encouraged not discouraged or made into a disciplinary violation.

Accommodation: None.

Response B: Department contends that this regulation is gender-neutral. The regulations apply equally to male and female staff as well as to male and female inmates. To prohibit females from conducting inmate counts would be discriminatory, hiring practices based on gender is illegal. Both male and female staff are trained in how to conduct inmate counts and are expected to conduct counts of either male or female inmates according to departmental training and protocol and procedures. Additionally, the key regarding masturbation and whether it is considered a violation is whether it is for the purpose of sexual arousal, gratification, annoyance or offence in public or in any place where there are those individuals who would be offended.

Comment C: Commenter contends that the Department knows what the results of this regulation will be. He further states that even without this regulation numerous misguided disciplinary violations have been written in the past, particularly by objecting female staff. He objects to the broad wording that disallows just about "anything" and leaves interpretation wide open to abuse.

Accommodation: None.

Response C: Department contends that this regulation is written to be clear and concise, and the Department contends that the regulatory language is not “wide open.” The PBSP Pilot experienced no problems with interpretation or implementation of the regulations. Any inmate can appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare, pursuant to Section 3084.1.

COMMENTS #2:

Comment A: Commenter contends that the regulations will serve to increase or permit invasion of inmates’ privacy which is directly relevant to the Federal Constitutional issues at prisons housing male inmates. He states that inmates are not being protected against invasion of privacy.

Accommodation: None.

Response A: Department contends that inmate sexual misconduct as addressed in this regulation is prohibited by Penal Code 314. the regulation is narrowly tailored to address this prohibited conduct, The word “Privacy” does not appear in the U.S. Constitution, but the U.S. Supreme Court has interpreted a right of privacy to exist for individuals under the following Amendments:

First Amendment: guarantees freedom of communication and expression of ideas. Fourth Amendment: guarantees freedom of association and freedom from unreasonable search and seizure. Fifth Amendment: freedom from self-incrimination and right to due process. Ninth Amendment: recognizes that rights not specified in the Constitution are vested with the people. Fourteenth Amendment: due process and equal protection with regard to the states. Additionally, prison inmates’ right to privacy is addressed in the 9th Amendment, which states, the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Prison and Inmate rights are address in Federal and state laws that govern the establishment and administration of prisons as well as the rights of the inmates. Although prisoners do not have full Constitutional rights they are protected by the Constitution's prohibition of cruel and unusual punishment. This protection requires that prisoners be afforded a minimum standard of living. Prisoners retain some other Constitutional rights including due process in their right to administrative appeals, which are afforded under the Department’s regulations. The Equal Protection Clause of the 14th Amendment has been held to apply to prison inmates. Prisoners are therefore protected against unequal treatment on the basis of race, sex, and creed.

Comment B: Commenter contends that female officers who observe male inmates while they are showering gives rise to such allegations, and are not limited to falsification of reports or violation of prohibition of equal protection and discrimination protected under the State and Federal Constitutions. He states that the recommendation is premature and the Federal Constitutional issues should be fully considered or addressed at the time of hearing to be held on this action and proposed changes which ignore or limit privacy.

Accommodation: None.

Response B: See Commenter #1, Responses A and B and Commenter #2, Response A. Also, the Department contends that inmates, pursuant to Section 3084.1, have the right to appeal any departmental decision, action, condition or policy which they can demonstrate as having an adverse effect upon their welfare. A Public Hearing was held on May 1, 2007 pursuant to Government Code 11346.45. All comments, written and oral are being summarized and responded to within the Final Statement of Reasons.

Comment C: Commenter requests that the Government overrule the Department's recommendation regarding this regulation and prevent the measure of invasion of male inmates' privacy otherwise its serving the express purpose to increase power to be used by female officers at prisons housing male inmates.

Accommodation: None.

Response C: See Commenter #1 Response B and Commenter #2, Response A. Department contends that Penal Code 5058 allow the Secretary to prescribe and amend rules and regulations for the administration of the prisons. The California Legislature has authorized the Department to promulgate regulations including the regulations as long as they are in compliance with the Administrative Procedure Act.

Comment D: Commenter contends that he has watched female officers respond to male inmates while in their cells or showers and then engage in similar conduct. He states that he has raised claims of sexual misconduct against female officers, but for retaliation, he remains diligent in his effort to obtain Director's level review or exhaustion to his appeals.

Accommodation: None.

Response D: See Commenter #1, Response B. Also, the Department contends that inmates, pursuant to Section 3084.1, have the right to appeal any departmental decision, action, condition or policy which they can demonstrate as having an adverse effect upon their welfare.

COMMENTER #3:

Comment A: Commenter contends that the regulations will not be an effective deterrent to IEX/Sexual disorderly conduct violations, nor from costing the State hundreds of thousands, even millions of dollars. He states that this situation began in PBSP SHU, where it is undisputed that there are psychologically impaired inmates.

Accommodation: None.

Response A: Department contends that the PBSP Pilot Program was successful. It decreased the opportunity for inmates to engage in sexual misconduct and minimized adverse impact on prison staff. Because inmate sexual misconduct occurs at prisons throughout the State, immediate statewide implementation of the Pilot Program is necessary to reduce inmate sexual misconduct incidents at all institutions in the State.

Comment B: Commenter contends that the regulations focus strictly upon disciplinary measures. He states that there is no mention or plan for preventative measures in the form of one on one counseling with a correctional counselor, or social worker. He states that there is no mention of education of the inmates before and/or those being charged with IEX offense. He asks doesn't the Department's title include the word "Rehabilitation"? He asks why there isn't a definition of "corrections" or "rehabilitation" in the Title 15?

Accommodation: None.

Response B: Department contends that the regulations and the management of inmate sexual misconduct are specifically for inmates that have not been diagnosed with any disorder regarding Exhibitionism. Any inmate diagnosed with such disorders will be treated appropriately. The Department does take seriously the word "Rehabilitation" in its name and offers numerous rehabilitation plans to inmates. Additionally, Penal Code 5050 established the Department of Corrections and Rehabilitation, and 5054 vests the authority for the supervision, management and control of the state prisons and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein – this includes rehabilitation programs.

Comment C: Commenter contends that it is a given that the Department doesn't want to be sued again for not taking action in such cases, however, he contends that there are no guarantees that the offenses are not going to be committed again. He also adds that female personnel will be handed unchecked power and that it will be easier to allege the charge, and that it will be hard, and sometimes nearly impossible to defend against, due to SHU always being under the gun, even when no evidence will result in guilty findings. The commenter states that the moment the female staff alleges the charge, fiscal impact starts. The inmate is re-housed from General Population to Ad Seg Unit where the cost of housing goes up.

Accommodation: None.

Response C: See Commenter #1, Response B and Commenter #2, Responses B and C.

Comment D: Commenter contends that the Federal Courts hold "a single incident of severe abuse can constitute a hostile work environment" therefore the Department can still be sued again by female personnel. He states that most females will seek to sue, instead of manipulate the State through paid time off utilizing the Employee Assistance Program, the Employee Post Trauma Program and of course seeking Post reassignments. The commenter states that if those in the most costly jobs are not accommodated, the females will run to the Equal Employment Opportunity Commission. He states that this will commence the moment the regulations are implemented without education programs regarding the subject matter as part of the implementation in GP as well as ASU, SHU, PSU.

Accommodation: None.

Response D: See Commenter #3, Response A.

Comment E: Commenter contends that this offense is so thoroughly repugnant to the average person that it can breed that righteous outrage which is the enemy of objective fact finding. It inflames the mind of the average person requiring rigorous professional standards to be upheld, that are not found during fact finding.

Accommodation: None.

Response E: Department contends that although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment F: Commenter contends that the proposed regulation does not address mental health screening. He states that it is undisputed that a mental disorder can cause an inmate to expose themselves, therefore he states that this needs to be part of the regulation with specifics on how to carry out such mental health screening once an inmate has been accused of the indecent exposure act.

Accommodation: None.

Response F: Department contends that the regulations are specifically for inmates that have not been diagnosed with any disorder regarding Exhibitionism. Any inmate diagnosed with such disorders will be treated appropriately. The Pilot Program was not duplicated word-for-word in the regulations; however, only regulatory language and language necessary to clarify.

Comment G: Commenter asks why aren't the placard and jumpsuit security precautions and restriction procedures conducted in the General Population (GP)?

Accommodation: None.

Response G: Department contends that Exposure Control Jumpsuits are not to be used in the GP as the inmate requires close monitoring when wearing a jumpsuit. Other inmates in close proximity could potentially assist in removing the jumpsuit or it could become an additionally security risk for the inmate who is wearing the jumpsuit. Additionally, if the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell/bed area (in Dorm Housing) the inmate is moved to Administrative Segregation, and a yellow cell front covering (placard) is applied or Exposure Control Jumpsuit is used.

Comment H: Commenter contends that the proposed regulations fail to possess implementation of any "sexual awareness," "appropriate sexual behavior" classes, groups or sessions in GP, ASU, PSU or SHU.

Accommodation: None.

Response H: Department contends that Penal Code 5054 vests the authority for the supervision, management and control of the state prisons and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein – this includes rehabilitation programs. Education programs are offered at each institution for inmates. The regulations were a direct result of the successful PBSP program. The regulations do not specifically address classes, groups or sessions; however, this type of education is ongoing within the prison setting of which inmates are continually made aware of and encouraged to attend or required as part of their treatment and/or rehabilitation.

COMMENTS #4:

Comment A: Commenter restates amendments proposed by the Department. Commenter also contends that the regulations do not meet the Necessity standard. Commenter states that the Initial Statement of Reasons (ISOR) has proposed these amendments in order to effectuate the Freitag decision because “Judge Henderson has stressed that a statewide rollout of the Program must be implemented immediately.” They state that the Department has failed to demonstrate by substantial evidence the need for the proposed amendments to effectuate the Freitag decision or a statewide rollout of the Freitag Pilot Program. Commenter further contends that Judge Karlton, of *Coleman vs. Schwarzenegger*, has ordered a limited rollout of a program that will assess and treat inmates with Exhibitionism or a Paraphilia associated with exhibitionist behaviors in at least three prisons by July 1, 2007. Commenter states that the focus of the monitoring in *Coleman* for these inmates has been on the identification, assessment and treatment of these inmates.

Accommodation: None.

Response A: Department contends that the regulations satisfy the standard of Necessity provided in Government Code Section 11349. The “Necessity” standard means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. Evidence includes, but is not limited to, facts, studies, and expert opinions.

A Pilot Program for management of indecent exposure incidents was implemented by Pelican Bay State Prison, effective March 1, 2005. This pilot program was designed to decrease the opportunity for inmates to engage in indecent exposure and sexual disorderly conduct and minimize the impact on staff. The pilot program, pursuant to Penal Code 5058.1 effects less than 10 percent of the inmate population and can be in effect for no more than two years. Due to the expiration of the Pilot Program, the Department was required to promulgate regulations through the Administrative Procedure Act to permanently adopt regulations regarding inmate sexual misconduct. The regulations meet the following regulatory tests: 1) it is a mandate applying equally to all inmates, parolees and the public in similar situations; 2) implements, interprets, or makes specific the provisions of a statute, court decision or governs a regulation of another agency; and 3) imposes a standard of required behavior with states or implied consequences for noncompliance. Additionally, the Department is well ahead of the

Coleman Court's limited implementation order by filing the regulations on a timely basis for implementation at institutions throughout the State.

Comment B: Commenter contends that the regulations do not incorporate or even reference critical elements of the Freitag Pilot. Commenter states that the *Coleman* Court has ordered a limited implementation of a fully staffed treatment program for inmates with Exhibitionism or a Paraphilia associated with exhibitionism behavior in at least three prisons by July 1, 2007. Commenter contends that the regulations are premature when no system-wide program exists for the identification, assessment and treatment of inmates with Exhibitionism or a Paraphilia associated with exhibitionism behavior. Commenter contends that the amendments standing alone constitute "punishment" for behavior that may likely be the result of an inmate's untreated mental illness.

Accommodation: None.

Response B: Department contends that it filed regulations as a direct result of the successful Pilot Program for management of inmate sexual misconduct at PBSP. Language which was regulatory was taken directly from the successful pilot program and incorporated into the proposed regulations. An Instructional Memorandum (IM) was the method in which the Department disseminated the pilot program information to PBSP. This IM provided not only regulatory language, but instructions to staff regarding the implementation of the Indecent Exposure Program. The proposed regulations contain regulatory language and minimal instruction to staff. The Department is well ahead of the Coleman Court's limited implementation order by filing the regulations on a timely basis for implementation at institutions throughout the State. The regulations and the management of inmate sexual misconduct are specifically for inmates that have not been diagnosed with any disorder regarding Exhibitionism. Inmates diagnosed with such disorders will be treated appropriately and the Department will continue to cooperate with the Coleman Court to screen and treat these inmates.

Finally, the regulations, standing alone, do not constitute "punishment" for behavior that may likely be the result of an inmate's untreated mental illness. There are two kinds of security measures, precautions and restrictions. Inmates who engage in acts of indecent exposure will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff. Security measures are tools used by staff for a determinate period to identify, prevent, and curtail the threatening behavior. Security precautions are not used as a punishment and should not be confused with disciplinary restrictions. Security restrictions are applied as a result of a disciplinary action where inmates are afforded due process.

Comment C: Commenter contends that the regulations do not meet the Authority standard. They contend that the Initial Statement of Reasons is wrong in that it states that the amendments are as a result of the Court decision in the case of *Freitag*. The Commenter contends that the amendments fail to incorporate or even reference critical elements of the *Freitag* remedial plan which includes screening and treatment. They also contend that the amendments fail to reference the *Coleman* orders directing the Department to implement treatment programs for inmates diagnosed with Exhibitionism.

Accommodation: None.

Response C: Department contends that Penal Code Section 5058 provides the Department with the authority to prescribe and amend rules and regulations for the administration of the prisons. The Initial Statement of Reasons is not incorrect regarding the regulations being promulgated as a result of the *Freitag* Court decision. In order for the Department to continue the Inmate Indecent Exposure Program which was ordered by the *Freitag* Court, the Department filed the proposed regulations. The Court did not specifically require the Department “to file regulations,” they did, however, require the Inmate Indecent Exposure Program to continue at PBSP. Promulgation of the regulations will allow the successful pilot program to be implemented at other institutions where it is deemed to be a benefit to the inmate and staff. The Department must take into consideration all the requirements of any applicable Court orders; however, it would be impossible to reference all mandates from various different Court orders, including State and Federal mandates.

Comment D: Commenter contends that the regulations do not meet the Consistency standard. They contend that they are inconsistent with *Freitag* and *Coleman* orders and remedial plans because they increase sanctions for inmates charged with rule violations for sexual misconduct without referencing or implementing other critical elements of these remedial plans. Commenter contends that the Freitag Indecent Exposure Remedial Plan is currently being revised and finalized and the Order adopting the Special Master’s Final Report and Recommendations includes a process for assessment and treatment of those inmates diagnosed with exhibitionism.

Accommodation: None.

Response D: Department contends that the emergency regulations were reviewed and approved by the Office of Administrative Law and were found to meet the Consistency standard as defined in Government Code 11349. The regulations and the management of inmate sexual misconduct are specifically for inmates that have not been diagnosed with any disorder regarding Exhibitionism. Inmates diagnosed with such disorders will be treated appropriately and the Department will continue to cooperate with the Coleman Court to screen and treat these inmates. The successful Pilot Program for the management of inmate sexual misconduct at PBSP was adopted pursuant to a Court order in Freitag. The successful Pilot Program was not duplicated word-for-word in the regulations; however, only regulatory language and language necessary to clarify.

Comment E: Commenter contends that the amendments do not implement the *Freitag* remedial plan or any purported statewide rollout required by Judge Henderson. They contend that permitting the amendments to go forward without a careful review of their impact on the *Coleman* and *Freitag* remedial plans is premature and wasteful and may be destructive to the progress already made.

Accommodation: None.

Response E: Department contends that the regulations do, in fact, implement the *Freitag* remedial plan. The PBSP Pilot Program was successfully adopted into regulations and was successfully implemented at PBSP with oversight by Special Master John Hagar.

COMMENTS #5:

Comment A: Commenter contends that the changes in Section 3000 should include all of the criminal elements of the statute and jury instructions as stated in the definition.

Accommodation: None.

Response A: Department contends that Section 3000 of the Title 15 contains all necessary language to correctly define Indecent Exposure and Sexual Disorderly Conduct. Government Code 11349(f) does not allow for the duplication of language in a regulation that serves the same purpose as a state or federal statute. The Penal Code 314 specifically defines indecent exposure and therefore it is not necessary to include all of the criminal elements of the statutes or jury instructions.

Comment B: Commenter contends that related to proposed changes to Section 3315(f)(5)(L)1 and 2, the inmate found guilty should be placed in Ad-Seg/SHU then he/she would lose said privileges.

Accommodation: None.

Response B: Department contends the PBSP Pilot Program confirmed that the loss of privileges is a highly effective penological tool in decreasing inmate sexual misconduct.

COMMENTS #6:

Comment A: Commenter contends that the regulations affect him personally. He contends that the female Correctional staff who have been and will be writing these Rule Violation Reports have been known for not conducting themselves in a professional manner by treating inmates with disrespect and without dignity. He contends that they falsify these reports for rogue reasons.

Accommodation: None.

Response A: Department contends that Title 15, Section 3004 states that inmates have the right to be treated respectfully. This section also states that inmates, parolees, and employees will not openly display disrespect or contempt for others. Correctional staff are required per Title 15 to respect the rights of others including inmates. Further, this section states that inmates, parolees and employees will not subject other persons to any form of discrimination because of race, religion, nationality, sex, etc. Any inmate can appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare, pursuant to Section 3084.1.

Comment B: Commenter contends that female Correctional Staff maliciously infringe on the privacy rights of inmates without senior prison officials protecting privacy rights of

inmates. He contends that they watch inmates while they are showering and using the toilet which clearly violates inmates “rights to privacy” and it is an “invasion of privacy.” He states that inmates have no legitimate expectation of privacy interests in their cells; they retain privacy interests in integrity of their own persons, which these new changes will undermine.

Accommodation: None.

Response B: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment C: Commenter contends that inmates in all-male institutions have limited right to privacy which includes rights to be free from unrestricted observation of their genitals and bodily functions by prison officials of the opposite sex under normal prison conditions, which he contends is a right retained by inmates entering the State’s prison system.

Accommodation: None.

Response C: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, the above comment with regards to an inmate’s privacy rights is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.